

FILED

NOT FOR PUBLICATION

MAR 13 2017

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL LEVIN; MARIA LEVIN;
PARKLANE ASSOCIATES, L.P.; SAN
FRANCISCO APARTMENT
ASSOCIATION; COALITION FOR
BETTER HOUSING,

Plaintiffs-Appellees,

DAVID GREENE,

Intervenor,

v.

CITY AND COUNTY OF SAN
FRANCISCO,

Defendant-Appellant.

No. 14-17283

DC No. CV 14-03352 CRB

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Argued and Submitted February 14, 2017
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: SILER,^{**} TASHIMA, and HURWITZ, Circuit Judges.

The City and County of San Francisco (the “City”) appeals from the district court’s judgment enjoining the enforcement of a City ordinance. While this appeal was pending, the City amended the ordinance to address the district court’s concerns. Because those amendments “sufficiently altered [the ordinance] so as to present a substantially different controversy from the one the District Court originally decided,” the appeal is now moot. *See Ne. Fla. Chapter of the Assoc. Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 662 n.3 (1993) (internal quotation marks omitted).

The City argues that, if the appeal is moot, we should order the district court to vacate its judgment. The general rule is to allow the lower court’s judgment to stand “when the appellant rendered the appeal moot by his own act.” *Blair v. Shanahan*, 38 F.3d 1514, 1520 (9th Cir. 1994). An exception may apply, however, if the appellant is a governmental entity. *See Chem. Producers & Distrib. v. Helliker*, 463 F.3d 871, 879 (9th Cir. 2006). *Chemical Producers* left open the question of whether “lesser public bodies,” like the City, are entitled to the benefit of that exception. *Id.* at 880. Rather than decide the issue in the first instance, we

^{**} The Honorable Eugene E. Siler, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

will remand to the district court to consider whether its judgment should be vacated in light of the adoption of the new ordinance.

Accordingly, we **DISMISS** the appeal as moot, and **REMAND** with instructions to consider whether the judgment should be vacated. *See Blair*, 38 F.3d at 1516.